

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

UNIFIRST CORPORATION

Case Nos. 1-CA-40955

And

1-CA-41570

1-CA-41596

1-CA-41606

UNITE, NEW ENGLAND JOINT BOARD,
AFL-CIO, CLC

1-CA-42051

1-CA-42120

Christina Poulter-Elzeneiny, Esq., Counsel for the General Counsel.

Peter Kraft, Esq., Law Offices of Peter Kraft, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on March 1, 2005 in Northampton, Massachusetts. The latest Consolidated Complaint herein (and further amended at the hearing), was based upon unfair labor practice charges that were filed by UNITE New England Joint Board, AFL-CIO, CLC, herein called the Union, on May 21, 2003 (and amended on May 29 and July 30, 2003) for 1-CA-40955, on February 19, 2004 (and amended on May 27, 2004), for 1-CA-41570, on March 2, 2004 (and amended on May 27, 2004) for 1-CA-41596, and on March 8, September 7, and October 1, 2004 for 1-CA-41606, 1-CA-42051, and 1-CA-42120. The Consolidated Complaint alleges that Unifirst Corporation, herein called the Respondent, engaged in conduct in violation of Section 8(a)(1)(3) and (5) of the Act. The Section 8(a)(1) conduct involves the alleged solicitation of grievances and the promise to remedy them, the promulgation of a rule prohibiting the circulation of a Union petition during nonworking time in nonworking areas, as well as interrogation and creating the impression that employees' Union activities were under surveillance by the Respondent. It is further alleged that the Respondent violated Section 8(a)(1)(3) of the Act by discharging employee Elliot Nunez. Finally, it is alleged that the Respondent violated Section 8(a)(1)(5) of the Act in two areas: by engaging in unilateral actions affecting the employees' terms and conditions of employment even though the Union was the exclusive collective bargaining representative of the employees, and by refusing to provide the Union with information that it requested, which information was necessary for, and relevant to, the Union as the collective bargaining representative of its employees. Respondent's Answer to these Section 8(a)(5) allegations defends that on September 4, 2001 it properly withdrew recognition from the Union and that this withdrawal of recognition continues.

Prior to the commencement of the hearing the parties entered into an Informal Settlement Agreement involving the Section 8(a)(1) allegations (Paragraph 7 of the Complaint), together with Paragraph 14(h) of the Complaint, which alleges that the Respondent refused to permit a Union representative access to employees on about March 1, 2004. Further, the parties entered into a non Board settlement of the Section 8(a)(3) allegation (Paragraphs 8, 9 and 10) and these allegations were withdrawn. Therefore, the sole remaining allegations are the Section 8(a)(5) allegations, Paragraphs 11 through 22, with the exception of Paragraph 14(h), as stated above, and Paragraph 21, the conclusory paragraph of the withdrawn Section 8(a)(3) allegation.

Findings of Fact

I. Jurisdiction

5 Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

10 Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. Background

15 Since about 1998, the Union has been the collective bargaining representative of the Respondent's employees in the following appropriate unit:

20 All production employees of the Respondent as described in a collective-bargaining agreement between Respondent and the Union, effective by its terms for the period October 5, 1998 through October 1, 2001.

25 For about forty years prior to 2001, these employees were members of Laundry Workers, Local 66, which merged with the Union in about 2001. Prior to 2001 the parties maintained a non-confrontational relationship. However, as a result of the merger of the unions, it became clear that the Union's pension fund was over funded, while its health and welfare fund was not. As a result, in about January 2001, the Union requested that the Respondent divert \$37 of its \$38 monthly contribution for each employee from the pension fund to its health and welfare fund. Fearful of future liability if the pension fund subsequently became under funded, the Respondent refused the Union's request, with the result that the relationship between the parties became less harmonious.

30 In April and May 2002, Administrative Law Judge Wallace Nations heard a case involving the Respondent and the Union concerning numerous Section 8(a)(1) allegations, resulting withdrawal of recognition by the Respondent and a refusal to furnish the Union with requested information, allegedly in violation of Section 8(a)(5) of the Act. On March 18, 2003, Judge Nations issued a Decision, wherein he dismissed some of the Section 8(a)(1) allegations. However, most relevant to the instant matter, Judge Nations found that the Respondent violated Section 8(a)(1) of the Act by statements that its agent made at a meeting of employees where he "...made it clear that the only way the employees would have profit sharing and a 401(k) plan was to decertify the Union" and by polling the employees regarding their sentiments toward the Union. He found that this poll was unlawful because it was "tainted" by the Section 8(a)(1) statements set forth above, and by the fact that it was taken while a Board decertification was pending. Because the poll, the tally of which showed that 37 employees favored the Respondent and 21 favored the Union, was tainted, so was the Respondent's withdrawal of recognition, which therefore violated Section 8(a)(5) of the Act, as did the Respondent's failure to provide the Union with requested information. An appeal was taken from this Decision, but it has not yet been ruled upon by the Board.¹

¹ At the hearing, I informed the parties that I would wait for the Board's decision in Judge Nations' case prior to issuing my decision in the instant matter. Upon reconsideration, I have decided not to wait for the Board's decision for a number of reasons. I have learned that the

Continued

IV. The Allegations Herein

The remaining portions of the Complaint herein, all admitted by the Respondent at the hearing², fall into two categories: unilateral changes and the refusal to provide the Union with requested information. As regards the former, it is alleged that the Respondent:

(a) In about May 2003, by General Manager Steve Harr, and Director of Human Resources William Coe, admitted supervisors and agents of the Respondent, at a meeting of the production employees at the Indian Orchard facility, offered unit employees two new benefit plans, including a long term disability plan.

(b) In about November 2003 it implemented a policy of requiring unit employees to meet written production standards.

(c) In about November 2003, it enforced more vigorously for unit employees pre-existing written production standards.

(d) In about December 2003, it continued to compensate employees based upon a new merit pay system that was unilaterally instituted in the Fall of 2001.

(e) In about December 2003, it enforced more vigorously pre-existing corporate and local company quality standards.

(f) In about January 2004, it implemented a new incentive plan to reward unit employees for good attendance.

(g) On about February 19, 2004, by Production Manager Mark Breault, it changed the work assignment and hours of unit employee Ken Bledsoe.

(i) On about September 3, 2004, it refused to permit a Union representative access to the employees.³

It is further alleged, and admitted, that these subjects relate to wages, hours and other terms and conditions of employment of the unit employees, and are mandatory subjects of bargaining, and that the Respondent engaged in these activities without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the conduct and the effects of the conduct.

As regards the alleged refusal to provide information, it is alleged, and admitted, that on

Board's decision is not imminent, and I believe that the employees, the Union, and the Respondent are entitled to know where they stand in this matter. Further, by issuing this decision at this time rather than waiting for the Board decision in the prior matter, the Board can rule on this decision at the same time that it rules on Judge Nations' Decision, thereby expediting the ultimate determination in this matter.

² While admitting the facts underlying the Section 8(a)(5) allegations, counsel for the Respondent stated that he was not waiving his right to assert a Section 10(b) defense.

³ It is not clear from the record why the parties included Paragraph 14(h) of the Complaint in their Informal Settlement Agreement, and did not include this paragraph, where the only difference is the date of the alleged conduct.

about March 1, 2004, the Union, by letter, requested the Respondent furnish it with certain information, which information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the unit, but since that date, the Respondent has failed and refused to furnish the Union with this information, in violation of Section 8(a)(5) of the Act. The requested information is:

(1) A list of current employees, including their names, dates of birth, rates of pay, job classifications, department, last known address, phone number and social security number.

(2) A copy of all current company personnel policies or procedures which relate to or have an effect on bargaining unit employees, including but not limited to leaves of absence, shifts, starting times, hiring, safety rules and regulations, disciplinary rules, attendance rules, plant rules, vacations, holidays and overtime;

(3) A copy of all company fringe benefit plans including pension, 401K, profit sharing, severance, stock incentive, health insurance, apprenticeship, training, legal services, child care or any other plans which relate to the employees and where applicable, copies of the summary descriptions for such plans, cost of such benefits, and costs paid by the employees where applicable;

(4) Copies of all current job descriptions for bargaining unit employees;

(5) Copies of any company wage or salary plans, including schedules for employees on incentive jobs;

(6) Copies of the OSHA 200 logs for the last three years.

V. Analysis

Relevant to the allegations herein is Judge Nations' finding that the Respondent unlawfully withdrew recognition from the Union on August 26 and September 4, 2001. The basis of this finding is that the withdrawal was based upon the "tainted" poll. A few weeks prior to the polling of the employees, Respondent conducted meetings of the employees telling them that they would only receive profit sharing and 401(k) benefits without the Union, in violation of Section 8(a)(1) of the Act. This would clearly affect the polled employees a few weeks later. In addition, as further found by Judge Nations, a poll taken while a petition for a Board election is pending does not serve any legitimate purpose since the employees' feelings would be better served by a Board conducted election. For these reasons, I agree with Judge Nations' finding that the Respondent's withdrawal of recognition of the Union in August and September violated Section 8(a)(5) of the Act. The Union was therefore the collective bargaining representative of the unit employees during the relevant period herein, from March 2003 through September 2004. As the collective bargaining representative of these employees, the Union was entitled to notice of, and an opportunity to bargain about, any change in the terms and conditions of employment of these unit employees. As the Respondent did not afford the Union an opportunity to bargain about the mandatory subjects of bargaining specified in Paragraphs 14 (a), (b), (c), (d), (e), (f), (g) and (i), Respondent violated Section 8(a)(1)(5) of the Act. Similarly, as the Respondent has failed and refused to furnish the Union with the information requested in its letter dated March 1, 2004, which information was necessary for, and relevant to, the Union as the collective bargaining representative of these employees, the Respondent violated Section 8(a)(1)(5) in this respect as well.

Conclusions of Law

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1)(5) of the Act by engaging in the following conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct:

(a) In about March 2003, it offered unit employees two new benefit plans, including a long term disability plan.

(b) In about November 2003, it implemented a policy of requiring unit employees to meet written production standards.

(c) In about November 2003, it enforced more vigorously pre-existing written production standards.

(d) In about December 2003, it continued to compensate employees based upon a new merit pay system that was unilaterally instituted in the Fall of 2001.

(e) In about December 2003, it enforced more vigorously pre-existing corporate and local company quality standards.

(f) In about January 2004, it implemented a new incentive plan to reward unit employees for good attendance.

(g) On about February 19, 2004, it changed the work assignment and hours of employee Ken Bledsoe.

(h) On about September 3, 2004, it refused to permit a Union representative access to the plant.

(4) The Respondent further violated Section 8(a)(1)(5) of the Act by failing and refusing to provide the Union with information that it requested by letter to the Respondent dated March 1, 2004, which information was necessary for, and relevant to, the Union as the collective bargaining representative of certain of the Respondent's employees.

The Remedy

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1)(5) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Judge Nations' decision recommended that the Respondent be ordered to recognize and, upon request, bargain with the Union as the exclusive collective bargaining representative of the unit employees and, if an understanding is reached, to embody that understanding in a signed agreement. I recommend that the Respondent be ordered to rescind the unilateral changes that it instituted between March 2003 and September 2004 and that it make whole any employee who suffered a loss as a result of these unilateral changes, in accordance with *Ogle Protection*

Service, 183 NLRB 682 (1970), with interest computed pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1978). I shall further recommend that Respondent be ordered to furnish the Union with the information it requested by letter dated March 1, 2004.

5 On these findings of fact and conclusions of law and based upon the entire record herein, I hereby issue the following recommended⁴

ORDER

10 The Respondent, Unifirst Corporation, its officers, agents, successors and assigns, shall:

1. Cease and desist from

15 (a) Unilaterally engaging in any activity affecting its unit employees' terms and conditions of employment and constituting mandatory subjects of bargaining, without prior notice to the Union and without affording the Union an opportunity to bargain about these subjects.

20 (b) Failing and refusing to provide the Union with requested information, which information is necessary for, and relevant to, the Union as the collective bargaining representative of certain of the Respondent's employees.

25 (c) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

30 (a) Notify its unit employees that it is rescinding its offer of two new benefits plans, including a long-term disability plan.

 (b) Rescind its policy implemented in about November 2003 of requiring employees to meet written production standards.

35 (c) Rescind the enforcement of the more vigorous pre-existing written production standards and pre-existing corporate and local company quality standards.

 (d) Rescind the compensation of employees based upon a merit pay system that was unilaterally instituted in the Fall of 2001.

40 (e) Rescind the implementation of the new incentive plan introduced in about January 2004, to reward unit employees for good attendance.

 (f) Rescind the change in work assignment and hours of employee Ken Bledsoe.

45 (g) Allow Union representatives access to the plant at reasonable times.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(h) In a timely manner provide the Union with the following information as requested by the Union in its letter dated March 1, 2004:

- 5 (i) A list of current employees, including their names, dates of hire, rates of pay, job classifications, department, last known address and social security number;
- 10 (ii) A copy of all current company personnel policies or procedures which relate to, or have an effect on, bargaining unit employees, including, but not limited to, leaves of absence, shifts, starting times, hiring, safety rules and regulations, disciplinary rules, attendance rules, plant rules, vacations, holidays and overtime;
- 15 (iii) A copy of all company fringe benefit plans, including pension, 401K, profit sharing, severance, stock incentive, health insurance, apprenticeship, training, legal services, child care or any other plans which relate to the employees and, where applicable, copies of the summary plan descriptions for such plans, cost of such benefits, and costs paid by the employees where applicable;
- 20 (iv) Copies of all current job descriptions for bargaining unit employees;
- (v) Copies of any company wage or salary plans, including schedules for employees on incentive jobs; and
- 25 (vi) Copies of the OSHA 200 logs for the last three years.
- (i) Make whole employees in the unit, with interest, for any loss of earnings and other benefits that they may have suffered due to the Respondent's unilateral changes discussed above.
- 30 (j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay, if
- 35 any, due under the terms of this Order.
- (k) Within 14 days after service by the Region, post at its facility in Indian Orchard, Massachusetts, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the
- 40 Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent
- 45 has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

current employees and former employees employed by the Respondent at any time since March 2003.

- 5 (l) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

10

Joel P. Biblowitz
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT make any change in your terms or conditions of employment without giving prior notice to UNITE New England Joint Board, AFL-CIO, CLC ("the Union") and without affording the Union an opportunity to bargain with respect to the conduct and the effects of the conduct.

WE WILL NOT refuse to provide the relevant and necessary information the Union requested by letter dated March 1, 2004.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL rescind the unilateral changes in your conditions of employment we made between March 2003 and September 2004, **WE WILL** reimburse any employee for any loss they suffered due to these changes, and **WE WILL** notify the Union in writing that this will be done.

WE WILL, in a prompt and timely manner, provide the Union with the information that it requested by letter dated March 1, 2004.

UNIFIRST CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601

Boston, Massachusetts 02222-1072

Hours of Operation: 8:30 a.m. to 5 p.m.

617-565-6700.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND
MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS
CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.

